

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
International Business Reply Service
Competitive Contract 3 (MC2011-21)
Negotiated Service Agreements

Docket No. CP2013-58

PUBLIC REPRESENTATIVE COMMENTS
(April 15, 2013)

I. BACKGROUND

In response to Order No. 1691,¹ the Public Representative comments on the proposal of United States Postal Service (USPS or Postal Service) to add an additional International Business Reply Service (IBRS) contract to the list of competitive NSA's.² The Postal Service requests the Commission to approve this contract within existing IBRS Competitive Contract 3 because it is functionally equivalent to the baseline contract approved by the Commission in Docket No. CP2011-59.³ Notice at 4-6.

The Board of Governors established prices and classifications "not of general applicability" for IBRS contracts in its Decision No. 08-24.⁴ The Commission accepted this contract as the basis for judging functionally equivalent IBRS contracts in Order No. 684.⁵

The Postal Service filed a copy of the Agreement (Attachment 1); a certified statement required by 39 CFR 3015.5(c)(2) (Attachment 2); a copy of Governors'

¹ Notice and Order Concerning An Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 5, 2013 ("Order 161").

² Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 4, 2013 ("Notice").

³ See Docket Nos. MC2011-21 and CP2011-59, Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011.

⁴ Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

⁵ Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011 (Order No. 684).

Decision No. 08-24 (Attachment 3); and an application for non-public treatment of materials filed under seal (Attachment 4) The Postal Service expects the Agreement will take effect April 24, 2013 Notice at 4, and expire 1 year after its effective date, unless terminated earlier. *Id.*

The Public Representative has reviewed the proposed NSA and supporting materials filed under seal and concludes that this contract is functionally equivalent to the baseline agreement. In addition, the Public Representative has reviewed the financial calculations filed and concludes that negotiated contract prices are likely to generate sufficient revenues to cover the attributable cost of providing service and satisfy the requirements of 39 U.S.C. § 3633.

II. FUNCTIONAL EQUIVALENCE.

The Postal Service asserts this contract is functionally equivalent to the IBRS 3 baseline contract because “it shares similar cost and market characteristics with previously filed IBRS contracts,” and also shares the same “functional terms of the of the IBRS 3 baseline agreement ... although other terms that do not directly change the nature of the agreements’ basic obligations may vary.” *Id.* at 4.

The differences between the instant contract and the IBRS 3 baseline agreement include an additional phrase in Article 15 stating that the Postal Service may be required to file information in connection with the contract in other Commission dockets including PRC Docket Nos. ACR2013, ACR2014 and ACR2015, as well as an additional Article 30 concerning Intellectual Property, Co-Branding, and Licensing. *Id.* at 5-6. The Postal Service characterizes these changes as minor, and asserts they do not affect the fundamental service being offered or the fundamental structure of the Agreement. *Id.* at 5-6.

III. ANALYSIS

The Public Representative has examined the terms of the contract, supporting materials, and concludes that the Postal Service’s Request comports with the provisions of title 39, and is functionally equivalent to the IBRS 3 baseline contract. The financial model measures partner costs, inflation rates, revenues, and other relevant variables in

the same manner as the baseline agreement. The calculations show that the Postal Service is likely to earn enough revenue to cover the attributable costs associated with this contract and make a contribution to the recovery of institutional costs in accordance with the Governor's No. 08-24 Decision. The Public Representative notes the percentage price increase for the weight of products being sent in this contract is the 2nd lowest IBRS increase from the baseline contract among all weight groups. Thus, the contract is very favorable to the partner, yet the Postal Service is very likely to make a substantial contribution towards the recovery of its institutional costs if the contract is approved. The Public Representative agrees that the differences mentioned do not affect the basic functioning of this contract from the baseline contract.

IV. CONCLUSION

After reviewing the financial information and other materials the Postal Service submitted under seal in this case, the Public Representative concludes that IBRS Contract 58 comports with the relevant provisions of title 39, and benefits the partner, Postal Service, and general public. The Public Representative recommends the Commission approve this contract.

Respectfully submitted,

_____/s
Lawrence Fenster
Public Representative for
Docket Nos. CP2013-58